IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 27TH OCTOBER 2006 / 5TH KARTHIKA 1928

ST.Rev..No. 316 of 2006()

TA.188/2005 of KERALA AGR.IT & STAT,TVM.
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REVN. PETITIONER/APPELLANT/ASSESSEE

A.ABDUL SALAM,
PROPRIETOR, A.S.CASHEW EXPORTERS,
KILIKOLLOOR, KOLLAM.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ
SRI.N.BALAKRISHNAN NAIR

RESPONDENTS: RESPONDENT/REVENUE

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY G.P. SRI. GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 27/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR&
K.M. JOSEPH, JJ.

S.T.REV. NO. 316 OF 2006

Dated this the 27th day of October, 2006

JUDGMENT

Ramachandran Nair,J.

Two questions pertain to addition sustained to turnover on two accounts. During inspection, the petitioner was found to be involved in massive unaccounted transactions. The accounts were therefore rejected and turnover estimated by adding three times the value of suppression. This is confirmed by the Tribunal. Senior counsel appearing for the petitioner contended that addition sustained is arbitrary. We notice that petitioner admitted the illegality detected in accounts at the time of inspection and remitted a compounding fee of Rs. 35,100/-. In view of the admission of irregularity, the rejection of accounts was rightly confirmed by the Tribunal. So far as the addition of turnover is concerned, we do not think addition of three times (actual plus two times) is in any way high or arbitrary. Therefore we uphold the order of the Tribunal on this issue. The next issue raised

pertains to addition towards purchase of raw cashew nuts at Rs. 5 lakhs and assessment of corresponding unaccounted sales of production at Rs. 7.5 lakhs. The addition on these two accounts arises from an inspection of petitioner's goods while under transport. Actual quantity found on the vehicle was much less than the quantity declared in the delivery note and therefore goods were released only after collecting security which was later converted to penalty. In first round appeal, the appellate authority found from assessment order that even the physical quantity found in the vehicle was not accounted in the stock register. Strangely the officer did not verify the original of the delivery note, the duplicate of which was used for transport. The first appellate authority remanded the matter for reconsideration. In second appeal filed by the petitioner, this was also raised as a ground before the Tribunal. By the time Tribunal took up the appeal, the petitioner obtained the revised order passed pursuant to the first appellate order and the same was produced before the Tribunal. The Tribunal though confirmed the order of the first appellate authority which was only a remand for reconsideration, made an observation probably relating to the revised assessment order produced before it. Counsel for the petitioner rightly pointed out that the Tribunal has no jurisdiction to decide the

correctness or otherwise of the revised assessment after remand by the first appellate authority. In fact, the order under challenge before the Trigbunal was only a remand order which is confirmed by the Tribunal. Since the assessing authority even after remand by the first appellate authority did not grant relief to the petitioner, it was for the petitioner to file first appeal against revised order. This opportunity was denied to the petitioner by virtue of the observations of the Tribunal in the impugned order. We therefore feel that the petitioner should be granted opportunity to file appeal against revised order pertaining to the addition on account of transport of raw cashew nut in respect of which penalty was levied. Accordingly there will be direction to the first appellate authority to entertain appeal against revised assessment issued pursuant to first appellate order for 1999-2000, if filed along with a copy of this judgment, within three weeks from the date of receipt of a copy of this judgment by the petitioner.

S.T.Rev. is disposed of as above.

C.N.RAMACHANDRAN NAIR)
Judge

(K.M. JOSEPH)
Judge